IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

Crl.Rev.Pet.No. 1116 of 2000()

CC.80/1996 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM
CRA.155/1997 of 2ND ADDL.SESSIONS COURT, KOLLAM
.....

REVN. PETITIONER: APPELLANT/ ACCUSED

RUBAS G., 18 B., KERALA AGRICULTURE
UNIVERSITY CAMPUS,
VELLANIKKARA P.O. THRISSUR.

BY ADV. SRI.P.B.SURESH KUMAR(QUILON)

RESPONDENTS: RESPONDENT AND STATE/ COMPLAINANT AND STATE
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1. **K.R.SUDHAKARAN, SUDHAKARA BHAVANAM,**
   KODUVILA, EAST KALLADA.

2. **STATE OF KERALA,**
   REP.BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA , ERNAKULAM.

BY ADV. SRI.M.V.THAMBAN
PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

tss

CRL.MP. NO.5873/2000 IN CRL.RP. 1116/2000

DISMISSED

07.09.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.A. TO JUDGE

tss

K.R.UDAYABHANU, J

Crl.R.P.No.1116 of 2000

Dated this the 7th day of September, 2007

O R D E R

The revision petitioner is the accused who stands convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.3,000/- and in default, to undergo simple imprisonment for three months.

2. It is the case of the complainant that the accused had borrowed a sum of Rs.25,000/- and issued the impugned cheque which when presented for encashment got dishonoured for want of funds in the account of the accused.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 and 2 and Exts. P1 to P6. PW1, the defacto complainant, has testified as to the execution of the cheque and also as to the issuance of the notice and non payment of the amount even thereafter.

4. It is the contention of the accused that there was no proper service of notice. PW1 has produced Ext. P4(a) postal

receipt which would show that the notice was not accepted as contended. Ext. P5 is the returned notice wherein it is mentioned that the addressee was not found in place. I find that in view of the decision of the Supreme Court in **Alavi Haji vs. Muhammed (2007(3) KLT 77)** there is no scope for the contention that the notice not have been received. In the circumstances, the conviction is confirmed.

6. Counsel for the revision petitioner has pleaded for modification of the sentence. In the circumstances, the sentence is modified to imprisonment till the rising of the court and to pay a compensation of Rs.30,000/- to PW1, the complainant, and in default, to undergo simple imprisonment for three months. The revision petitioner is granted three months' time to remit the amount of compensation. He shall appear before the Judicial First Class Magistrate Court-I, Kollam on 10.12.2007 to receive the sentence.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl